

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CHARLES A. EVANGELISTA ,)	
Plaintiff)	
)	
v.	)	CIVIL ACTION
	)	NO. 05-CV-10311-MLW
SHANE MARCOTTE, JASON FANION,)	
DANIEL FALLON, III, JONATHAN COTTER,)	
JAMES JOHNSON, CARL SUPERNOR, and)	
THE CITY OF WORCESTER,)	
Defendants)	
)	

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS AND ANSWERS TO INTERROGATORIES
FROM DEFENDANT CITY OF WORCESTER**

In support of his Motion to Compel Production of Documents and Answers to Interrogatories (the "Motion"), Plaintiff Charles A. Evangelista ("Evangelista") hereby states as follows:

FACTUAL BACKGROUND

In this civil rights action, Evangelista asserts federal and state law claims against the City of Worcester (the "City") and various of its police officers resulting from the excessive force used against him while he was in police custody following his arrest on March 16, 2003.

Specifically, Evangelista alleges that, on March 16, 2003, at approximately 8:00 p.m., he was arrested by the Worcester Police Department ("WPD") on a charge of being a disorderly person. *See First Amended Complaint, Document No. 17, ¶11.* He was subsequently brought to the Worcester Police station and was placed in a holding cell.

Id. at ¶12. At approximately 9:15 p.m., Evangelista was brought by Defendant Fallon from this holding cell to a room where detainees were booked. *Id.* at ¶13. As part of the booking process, Evangelista was directed to remove his shoes and belt and to stand against a wall to be photographed. *Id.* at ¶15. As Evangelista was removing his shoes, two Worcester Police officers, defendants Fallon and Cotter, without provocation, knocked Evangelista's legs out from under him, causing him to fall to the floor. *Id.* at ¶16. After Evangelista fell to the floor, several of the officers grabbed hold of Evangelista and forcibly dragged him out of the booking room into a hallway. *Id.* at ¶17. Defendants Marcotte and Fanion each took hold of Evangelista's feet, elevated them, and then dragged Evangelista feet first down the hallway towards the area of jail cells. *Id.* at ¶18. As they approached the door leading to the jail cells, Defendant Marcotte, without provocation or justification, struck Evangelista in the abdomen with a shod foot, with force so great that it caused Evangelista's bladder to rupture. *Id.* at ¶19.

The entire booking of Evangelista, including his being dragged and beaten, was captured on the videotape system utilized by the WPD at the time of the incident. *Id.* at ¶23. Immediately following the beating of Evangelista, defendant Johnson, aware that the incident had likely been caught on videotape, called and spoke to the operator of the videotape, police officer Scott Calhoun, and then subsequently spoke to Calhoun's supervisor, defendant Supernor. *Id.* at ¶24. Prior to the videotaping of the next booking that night, and within minutes of the beating of Evangelista, defendant Supernor reviewed the booking tape, observed the tape of the incident, and then caused the videotape of the Evangelista booking to be erased in its entirety. *Id.* at ¶25.

Defendant Supernor also failed to report the incident, and failed to make any attempt to determine whether the Evangelista had been injured. *Id.*

While Evangelista was detained in his jail cell, he urinated blood. *Id. at ¶ 29.* Upon observing the blood in his urine, Evangelista repeatedly shouted through the bars of his cell that he was hurt and needed medical attention. *Id.* Notwithstanding his repeated requests, Evangelista was not afforded any medical attention by the WPD. *Id. at ¶ 30.*

At approximately 12:50 a.m. on March 17, 2003, Evangelista posted bail and was released from custody. *Id. at ¶ 31.* Evangelista was brought to the University of Massachusetts Medical Center by a friend, where he underwent emergency surgery for his ruptured bladder. *Id. at ¶ 32.*

By his complaint, Evangelista is not only seeking recovery from defendant Marcotte for excessive force, but also is asserting federal civil rights claims against the other officers for failing to intervene to prevent Marcotte's beating of him and for engaging in a cover-up of the incident (*Id. at ¶¶ 43-48*). Evangelista also asserts claims against the City for failing to properly supervise and/or discipline the officers involved. In support, the Complaint alleges, *inter alia*, that, at the time of the incident, the City knew of numerous incidents wherein WPD officers had used or were accused of using excessive force and that the *de facto* policy of the WPD was not to report injuries to detainees or incidents of police misconduct. *Id. at ¶¶ 52-53.*

PROCEDURAL BACKGROUND

This lawsuit was commenced on February 16, 2005. On November 2, 2005, Evangelista propounded his First Set of Interrogatories and First Request for Production of Documents upon the City. On March 22, 2006, the City provided written answers to each and provided some responsive documents. The City's written Response to Evangelista's First Request for Documents is attached at Exhibit A. The City's Answers to Evangelista's First Set of Interrogatories is attached at Exhibit B. On May 31, 2006, counsel for Evangelista provided counsel for the City a letter pursuant to Local Rule 37.1(A) in an effort to narrow the areas of disagreement. A copy of the May 31, 2006 letter is attached at Exhibit C. Following the letter, respective counsel conferred by telephone and, as a result, the City did provide a Supplemental Response to Document Request No. 19, a copy of which is attached at Exhibit D. However, aside from this, the City has maintained its position documents and information concerning the personnel files of the defendants and other incidents, Internal Affairs Investigations, and lawsuits concerning excessive force by the WPD are not relevant to this action nor subject to discovery.

DISPUTED DISCOVERY REQUESTS

Document Request No. 1

A complete copy of the personnel files of Shane Marcotte, Jason Fanion, Daniel Fallon, III, Jonathan Cotter, James Johnson, and Carl Supernor, including records of all disciplinary action against either individual, records of all Internal Affairs Complaints or civilian complaints lodged against either individual by any detainee, by any prisoner, or by a member of the public or by a member of the Worcester Police Department, all psychological profiles and tests, and all job or performance evaluations from the time each individual commenced employment with the City of Worcester to the present date.

Response. Objection. Defendants object to Request 1 on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants further object on the grounds that the request is overly broad in time and scope. Defendants further object to this request on the grounds that it seeks internal affairs and/or personnel file information, in which the police officers have a privacy interest, and further object to the extent that the files, or a portion thereof, are privileged. Notwithstanding and without waiving these objections, none of the individually named defendants have been disciplined for excessive force or deliberate indifference to the rights of detainees.

Document Request No. 3

Any and all documents reflecting or in any way relating to civilian complaints, Internal Affairs complaints and/or lawsuits against members of the Worcester Police Department, including but not limited to Worcester police officers, detectives and civilian employees, and/or against the City of Worcester, alleging the use of excessive force, civil rights violations, assault and/or battery, at any time between 1980 and the present.

Response. Objection. Defendants object to Request 3 on the grounds that it is overly broad in both time and scope and unduly burdensome. Defendants also object to the extent Request 3 seeks information regarding lawsuits, when that information is subject to the limitation outlined in Fed.R.Civ.P. 26(b)(2)(i) and is "obtainable from some other source [i.e., the court system] that is more convenient, less burdensome, or less expensive" Defendants further object to this request on the grounds that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants further object to this request on the grounds that it seeks internal affairs and/or personnel file information, in which the police officers and/or witnesses have a privacy interest, and further object to the extent that the files, or a portion thereof, are privileged. Notwithstanding and without waiving these objections, Defendants are not aware of any judgments for civil rights violations by police officers against the City of Worcester in the last ten years.

Document Request No. 4

Any and all documents reflecting or in any way relating to lawsuits against members of the Worcester Police Department, including but not limited to Worcester police officers, detectives and civilian employees, and/or against the City of Worcester, alleging the loss, erasure or destruction of videotapes or audiotapes.

Response. Objection. Defendants object to Request 4 on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery

of admissible evidence at trial in this matter. Defendants further object to the terms "reflecting or in any way relating" as they are vague and ambiguous. Defendants also object to this request on grounds that it is overly broad in time and scope. Defendants also object to the extent Request 4 seeks information regarding lawsuits, when that information is subject to the limitation outlined in Fed.R.Civ.P. 26(b)(2)(i), and is "obtainable from some other source [i.e., the court system] that is more convenient, less burdensome, or less expensive.

Document Request No. 5

Any and all documents reflecting the discipline of any Worcester police officer for the use of excessive force against detainees or members of the public at any time between 1980 and the present date.

Response. Objection. Defendants object to Request 3 on the grounds that it is overly broad in both time and scope and unduly burdensome. Defendants further object to this request on the grounds that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants further object to this request on the grounds that it seeks internal affairs and/or personnel file information, in which the police officers and/or witnesses have a privacy interest, and further object to the extent that the files, or a portion thereof, are privileged. Notwithstanding and without waiving these objections, Defendants are not aware of any judgments for civil rights violations by police officers against the City of Worcester in the last ten years.

Document Request No. 14

Any and all civil rights complaints made or filed against Worcester by members of the public or by prisoners, filed with any state or federal court between January 1, 1980 and the present date, which include allegations of excessive force and/or the failure to supervise, train, discipline and control Worcester police officers and civilian employees.

Response. Objection. Defendants object to Request 14 on the grounds that it is overly broad and unduly burdensome in both time and scope. Defendants further object to this request on the grounds that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants also object to the extent this request seeks information regarding lawsuits, when that information is subject to the limitation outlined in Fed.R.Civ.P. 26(b)(2)(i), and is "obtainable from some other source [i.e., the court system] that is more convenient, less burdensome, or less expensive ... Notwithstanding and without waiving these objections, the City is not aware of any judgments for civil rights violations by police officers against it in the last ten years.

Document Request No. 15

Any and all judgments against any Worcester police officer, including all jury verdicts and/or jury responses to Special Questions or Interrogatories, entered in any state or federal court between 1980 and the present date wherein any Worcester police officer was found liable for civil rights violations involving the use of excessive force against detainees or members of the public.

Response. Objection. Defendants object to Request 15 on the grounds that it is overly broad and unduly burdensome in both time and scope. Defendants further object to this request on the grounds that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants also object to the extent this request seeks information regarding lawsuits, when that information is subject to the limitation outlined in Fed.R.Civ.P. 26(b)(2)(i), and is "obtainable from some other source [i.e., the court system] that is more convenient, less burdensome, or less expensive ... Notwithstanding and without waiving these objections, the City is not aware of any judgments for civil rights violations by police officers against it in the last ten years. The City's Response to Request No. 18 was as follows: Objection. Defendants object to Request 18 on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants further object to this request on the grounds that it is overly broad in both time and scope.

Document Request No. 16

Any and all judgments against the City of Worcester, including all jury verdicts and/or jury responses to Special Questions or Interrogatories, entered in any state or federal court between 1980 and the present date wherein the City of Worcester was found to have acted with deliberate indifference to the rights of any plaintiff in the discipline, supervision, training and/or control of Worcester police officers.

Response. Objection. Defendants object to Request 16 on the grounds that it is overly broad and unduly burdensome in both time and scope. Defendants further object to this request on the grounds that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants also object to the extent this request seeks information regarding lawsuits, when that information is subject to the limitation outlined in Fed.R.Civ.P. 26(b)(2)(i), and is "obtainable from some other source [i.e., the court system] that is more convenient, less burdensome, or less expensive ... Notwithstanding and without waiving these objections, the City is not aware of any judgments for civil rights violations by police officers against it in the last ten years. The City's Response to Request No. 18 was as follows: Objection. Defendants object to Request 18 on the grounds that it seeks information that is neither relevant nor reasonably calculated to

lead to the discovery of admissible evidence at trial in this matter. Defendants further object to this request on the grounds that it is overly broad in both time and scope.

Document Request No. 18

Any and all settlement agreements entered into between the City of Worcester and any plaintiff in any action involving claims of the use of excessive by Worcester police officers against detainees or members of the public.

Response. Objection. Defendants object to Request 18 on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants further object to this request on the grounds that it is overly broad in both time and scope.

Interrogatory No. 10(a)

Please identify the following: (a) each and every Citizen's Complaint and/or Internal Affairs Complaint and/or request for investigation filed with the Worcester Police Department by any detainee or member of the public in which charges concerning the use of excessive force, assault and/or battery were filed against Worcester police officers or civilian employees of the Worcester Police Department, at any time between January 1, 1980 and the present date, regardless of whether or not the charges were substantiated;

Answer. Objection. The City objects to Interrogatory 10 on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. The City further objects to this request on grounds that it is overly broad in both time and scope and unduly burdensome. The City further objects to this request on grounds that it seeks internal affairs and/or personnel file information, in which the police officers have a privacy interest, and further object to the extent that the files, or a portion thereof, are privileged. Notwithstanding and without waiving these objections, I am informed, the City is not aware of any judgments for civil rights violations by police officers against it in the last ten years.

ARGUMENT

Fed. R. Civ. P. 26(b)(1) provides that "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party." The rule further provides that "[r]elevant information need not be admissible at the trial if

the discovery appears reasonably calculated to lead to the discovery of admissible evidence." As the United States Supreme Court has instructed, relevance under this rule "is construed broadly to encompass any matter that bears on, or that could lead to other matter that could bear on, any issue that is or may be in the case." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 350 (1978) (*citing Hickman v. Taylor*, 329 U.S. 495, 500-501 (1947)); *see also Klonoski v. Mahlab*, 156 F.3d 255, 267 (1st Cir. 1998) ("*the plain language of this Rule 26(b)(1) contemplates wide-ranging discovery to the fullest possible extent*").

The relevance threshold is even lower in civil rights cases, such as this one. "The great weight of policy in favor of discovery in civil rights actions supplements the normal presumption in favor of broad discovery." King v. Conde, 121 F.R.D. 180, 195 (E.D.N.Y. 1988). In federal civil rights cases, "an assertion of privilege must 'overcome the fundamental importance of a law meant to insure each citizen from unconstitutional state action.'" Mason v. Stock, 869 F.Supp. 828, 833 (D.Kan.1994) (*internal citations omitted*).

1. The Personnel Files of Each of the Individual Defendants and All Documents Respecting Past Disciplinary Action and Internal Affairs Complaints Made Against the Individual Defendants

Document Request No. 1 seeks a complete copy of the personnel files of each of the individual defendants, including all records of any disciplinary action, Internal Affairs Complaints, all psychological profiles and tests, and all job or performance evaluations. The City objected on grounds of relevance, broadness, and privacy. The City also stated that none of the individual defendants has "been disciplined for excessive force or deliberate indifference to the rights of detainees." *Id.*

However, during their recent depositions in early August, several of the individual defendants admitted that they have been subject to Internal Affairs complaints in the past, some involving the alleged mistreatment of arrestees/detainees. However, only one could provide the name of one of the complainants, and he could not specify the year when it was made. According to the defendants, none of the various complaints were ever sustained in the opinion of Internal Affairs.

Evangelista submits that the complete disciplinary history and internal affairs history of each of the individual defendants is reasonably calculated to lead to the discovery of admissible evidence and should be produced to him, subject to the protection of the previously issued Protective Order. Any prior misconduct of the individual defendants could prove material in whether the City should be liable for negligent retention and deliberate indifference, and whether the individual defendants should be liable for punitive damages. The fact that the City apparently decided that none of the prior allegations of mistreatment warranted discipline does help the City if the circumstances of warranted discipline. The Complaint alleges that the City's *de facto* policy is to not discipline for allegations of abuse of arrestees/detainees. Moreover, the production of the complete personnel file will assure that Evangelista will learn of all complaints or concerns about an individual defendant's performance on the job.

Evangelista further states that any privacy concerns are alleviated by the Protective Order, issued on March, 2004. Accordingly, Evangelista asks that this Court order the City to produce a complete copy of the personnel files of each of the individual defendants, including all records of all disciplinary actions taken against any

of the individual defendants and all records concerning all complaints/investigations, including Internal Affairs Investigations/Complaints with respect to which any of the individual defendants was alleged to have engaged in any misconduct.

2. **All Documents Concerning Other Internal Affairs Complaints/Investigations Respecting Allegations of WPD Excessive Force/Mistreatment of Arrestees/Detainees since January 1, 1993.**

Document Requests No. 3 seeks all documents respecting, *inter alia*, all Internal Affairs complaints against the City or any member of the WPD “alleging the use of excessive force, civil rights violations, assault and/or battery, at any time between 1980 and the present.” Document Request No. 5 seeks all documents respecting discipline upon any WPD officer for use of excessive force since 1980. Similarly, Interrogatory No. 10(a) seeks the identity of each citizen complaint and Internal Affairs Complaint against WPD officers since 1980. In response, the City refused to produce any information or documents (aside from documents concerning the Internal Affairs investigation of the incident in question), objecting on grounds of relevance, privacy and undue burden. In the May 31, 2006 Local Rule 37.1(A) letter, undersigned counsel narrowed the requested time period of the Document Request to since January 1, 2003. On August 1, 2006, undersigned counsel sent an e-mail to counsel for the City attaching the list in the *Schultz* matter (described *infra*) and requesting a similar list here. The City’s attorney has maintained the City’s position that information on other Internal Affairs complaints and investigations need not be produced.

Evangelista asks that the City be compelled to produce this information, subject to the previously issued Protective Order.

First, information concerning other incidents where WPD officers engaged in excessive force of an arrestee/detainee is relevant to the claims of negligent retention, negligent training, and deliberate indifference.

Second, as the City is well aware, Internal Affairs materials of concluded investigations constitute "public records" under Massachusetts Public Record Law and, as such, are subject to production to any person who so requests them. Worcester Telegram & Gazette v. Chief of Police of Worcester, 58 Mass.App.Ct. 1 (2003) (*internal affairs investigatory materials not exempt under Massachusetts Public Records Law*). The City's claim of such records being private is simply not accurate. This is especially so given the view of the role played by police officers as public servants who must be accountable to public view."

As the Appeals Court observed in Worcester Telegram, "[a] citizenry's full and fair assessment of a police department's internal investigation of its officer's actions promotes the core value of trust between citizens and police essential to law enforcement and the protection of constitutional rights." *Id. at 7-8.* In King v. Conde, 121 F.R.D. 180, 187 (E.D.N.Y. 1988), the court stated that "[m]ost information requested by civil rights plaintiffs ... deals with professional personnel records, such as prior involvement in disciplinary proceedings or citizen complaints filed against officers. The privacy interest in this kind of professional record is not substantial, because it is not the kind of 'highly personal information' warranting constitutional safeguard." *Id. at 191;* see also, Williams v. Boston, 213 F.R.D. 99 (D. Mass., 2003) (citing King favorably regarding a discovery dispute in a civil rights action).

Moreover, whatever concerns of privacy that exist can more than adequately be alleviated by subjecting the produced records to the Protective Order that issued on March 14, 2005.

Lastly, the City's claims of undue burden are eliminated by the procedure set forth in the requested order. As set forth in the Motion, the City would initially only be required to produce a list of all such Internal Affairs complaints/investigations since January 1, 1993. After receipt, Evangelista could then request the files for selected investigations, but the City would then have an opportunity to seek a Protective Order if it believed that the scope of the request was too broad. In the alternative, Evangelista suggests that the Court compel the production by the City of the requested list and then direct Evangelista to submit to the Court a Motion seeking an order for the underlying documents of any particular Internal Affairs Investigation.

While the City may claim that producing such a list will be unduly burdensome, it has done so in the past, when ordered to do so. Attached at Exhibit D is an exhibit attached to the City of Worcester's Motion in Limine (Document No. 40), that the City filed in the case of Schultz v. City of Worcester, et al, Civil Action No. 02-40003(CBS), on December 16, 2005. According to the Motion in the Schultz matter, this exhibit is the City's supplemental answer to an interrogatory that the court had ordered the City to provide. It lists all citizen complaints made against WPD officers alleging excessive force from 1989 through January 1, 1999. Unfortunately for the reader, the list does not provide any dates and provides minimal information. However, the City's generation

of this list shows that the City has the resources and ability to provide the list Evangelista requests here.

Accordingly, Evangelista respectfully requests that this Court order the City to supplement its answer to Interrogatory No. 10(a) and list, in chronological order from the date of complaint, each and every citizen complaint and Internal Affairs complaint involving an allegation against the WPD or any officer thereof alleging the use of excessive force and/or the mistreatment of an arrestee/detainee at any time since January 1, 1993. Such supplemental answer shall provide the full name, and last known address and phone number of the complainant (and alleged victim if different), the date of the alleged incident, the date of the complaint, a general description of the nature of the allegation, the result of the Internal Affairs investigation (sustained, not sustained, etc.), the date the Internal Affairs investigation was complete, the WPD officer who drafted the Internal Affairs investigation report, and, to the extent any of the individual defendants were alleged to have committed any wrongdoing and/or were asked to submit a written report on the incident in question, the name of each and every such individual defendant. Whereupon, after the production of such information, Evangelista will have an opportunity to request the underlying Internal Affairs documents pursuant to the procedure set forth in the Motion and proposed Order.

3. **Documents Respecting Other Lawsuits Against the City and/or Members of WPD Involving Allegations of Excessive Force Since 1993.**

Various of Evangelista's Documents Requests seek documents respecting other lawsuits against the City involving excessive force. Document Request No. 3 seeks all

documents respecting any lawsuit against the members of the WPD alleging excessive force since 1980. Document Request No. 14 seeks all documents respecting all complaints and lawsuits filed against the City involving allegations of excessive force and/or the failure to supervise, discipline, or train. Document Request No. 15 seeks copies of all judgments against any WPD police officer since 1980 wherein the WPD officer was found liable for civil rights violations involving the use of excessive force. Document Request No. 16 seeks copies of all judgment against the City wherein the City was found to have acted with deliberate indifference since 1980. Document Request No. 18 seeks a copy of all settlement agreements between the City and any plaintiff in an action involving allegations of excessive force by the WPD.

Similarly, Interrogatory No. 10(b) and (c) sought the identity of every judgment where WPD police officer was found liable for civil rights violations involving the use of excessive force or the City was found liable for deliberate indifference. Interrogatories No. 15 sought the identity of all lawsuits against the City that involved allegations of excessive force by the WPD.

In response, the City failed to produce any responsive documents or provide any information, except stating that none of the individual defendants has ever been disciplined for excessive force. The City objected on grounds of relevance, scope, and undue burden.

Since then, Evangelista has narrowed the scope of these requests to the period since January 1, 1980.

Now, by this Motion, Evangelista is simply seeking the production of certain documents involving all lawsuits since January 1, 1993 wherein the City or member of the WPD has been accused of excessive force and/or mistreating a detainee/arrestee. This information is reasonably calculated to lead to discoverable information relevant to the claims against the City. Moreover, it is of such a kind as to be fairly accessible to the City, especially since its legal counsel's office routinely defends these types of actions.

Wherefore, Evangelista requests that this Court order the City to produce, with respect to each and every such lawsuit, a copy of the most recently filed complaint, all answers to the complaint filed by the City and/or any WPD officers, all answers to interrogatories and written responses by the City and/or any individual members of the WPD to documents requests, any court order(s) dismissing the complaint and/or granting judgment; any settlement agreement and release, and any judgment.

4. Information Respecting Other Lawsuits Against the City Involving the Loss, Erasure or Destruction of a Videotape or Audiotape.

Here, as stated above, the video and audio tape of Evangelista's booking was erased when, immediately after Evangelista's booking, the tape was rewound to the beginning of the booking, and, when the next booking occurred, the tape of Evangelista's booking was taped over. The City claims this was an innocent mistake.

Document Request No. 4 seeks all documents concerning any lawsuits against members of the WPD involving an allegation of the loss, erasure, or destruction of videotapes or audiotapes. The City objected on grounds of relevance, vagueness, and that the requested information is accessible by the plaintiff. In his May 31 letter,

Evangelista narrowed the scope of this request to incidents occurring on or after January 1, 2003.

Evangelista states that this information is highly relevant to a claim of deliberate indifference and failure to discipline. Such information is also relevant on the claims against the individual officers, particularly the officers involved in the videotape aftermath of the booking. Moreover, requiring the City to produce the complaint, answer, settlement agreement, judgment, and interrogatory answers of the City and members of the WPD is not unduly burdensome as it should be available to the legal counsel's office.

Wherefore, Evangelista asks that this Court order the City to produce, with respect to each and every lawsuit filed against the City and/or any of the individual defendants since January 1, 1993 involving the loss, erasure or destruction of a videotape or audiotape, a copy of the most recently filed complaint, all answers to the complaint by the City and any WPD officers, all answers to interrogatories and written responses to documents requests by the City and any individual WPD officers, any court order(s) dismissing the complaint and/or granting judgment; any settlement agreement and release, and any judgment.

WHEREFORE, the plaintiff, Charles Evangelista, respectfully requests that this Court enter an order, in the form substantially the same as the proposed Order being submitted herewith, compelling the City of Worcester to produce the documents and information set forth in the Motion within ten (10) of such Order.

Respectfully submitted:

CHARLES A. EVANGELISTA

By his attorneys:

/s/ William T. Harrington

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Dated: August 16, 2006

CERTIFICATE OF SERVICE

I hereby certify that, on August 16, 2006, I filed this document with the Court electronically via the Court's CM/ECF system and that I served a copy of this documents upon each counsel and party who has appeared in the action but who has not signed up to receive electronic notice, serving a copy by first class mail.

/s/ William T. Harrington

William T. Harrington

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

No. 05CV10311-MLW

CHARLES A. EVANGELISTA,)	
Plaintiff)	
)	
v.	)	DEFENDANTS' RESPONSE
	)	TO PLAINTIFF'S FIRST
SHANE MARCOTTE, JASON FANION,	)	REQUEST FOR PRODUCTION
DANIEL FALLON, III, JONATHAN	)	OF DOCUMENTS
COTTER, JAMES JOHNSON, CARL)	
SUPERNOR and CITY OF WORCESTER,)	
Defendants)	
)	

Defendants, Shane Marcotte, Jason Fanion, Daniel Fallon, III, Jonathan Cotter, James Johnson, Carl Supernor and the City of Worcester (City) hereby incorporate by reference the Protective Order, entered by the Court in this case on March 14, 2006, which is binding on the information provided herein, and respond to Plaintiff Charles A. Evangelista's First Request for Production of Documents as follows:

Req. 1. A complete copy of the personnel files of Shane Marcotte, Jason Fanion, Daniel Fallon, III, Jonathan Cotter, James Johnson, and Carl Supernor, including records of all disciplinary action against either individual, records of all Internal Affairs Complaints or civilian complaints lodged against either individual by any detainee, by any prisoner, or by a member of the public or by a member of the Worcester Police Department, all psychological profiles and tests, and all job or performance evaluations from the time each individual commenced employment with the City of Worcester to the present date.

Resp. 1. Objection. Defendants object to Request 1 on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants further object on the grounds that the request is overly broad in time and scope. Defendants further object to this request on the grounds that it seeks internal affairs and/or personnel file information, in which the police officers have a privacy interest, and further object to the extent that the files, or a portion thereof, are privileged. Notwithstanding and without waiving these objections, none of the individually named defendants have been disciplined for excessive force or deliberate indifference to the rights of detainees.

Req. 2. Any and all documents reflecting the names, addresses, badge numbers and current rank of any Worcester Police officer, detective or civilian employee who made observations of Evangelista at

any time during his detention at the Worcester Police station on March 16, 2003 and March 17, 2003.

Resp. 2. Objection. Defendants object to the phrase in Request 2 "made observations of Evangelista" on the grounds that it is vague and ambiguous. Notwithstanding and without waiving this objection, see duty rosters with names and badge numbers of the officers on duty during Plaintiff's detention, which were provided in response to Plaintiff's 6/21/04 Public Records Request No. 1.

Req. 3. Any and all documents reflecting or in any way relating to civilian complaints, Internal Affairs complaints and/or lawsuits against members of the Worcester Police Department, including but not limited to Worcester police officers, detectives and civilian employees, and/or against the City of Worcester, alleging the use of excessive force, civil rights violations, assault and/or battery, at any time between 1980 and the present.

Resp. 3. Objection. Defendants object to Request 3 on the grounds that it is overly broad in both time and scope and unduly burdensome. Defendants also object to the extent Request 3 seeks information regarding lawsuits, when that information is subject to the limitation outlined in Fed. R. Civ. P. 26(b)(2)(i), and is "obtainable from some other source [i.e., the court system] that is more convenient, less burdensome, or less expensive" Defendants further object to this request on the grounds that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants further object to this request on the grounds that it seeks internal affairs and/or personnel file information, in which the police officers and/or witnesses have a privacy interest, and further object to the extent that the files, or a portion thereof, are privileged. Notwithstanding and without waiving these objections, Defendants are not aware of any judgments for civil rights violations by police officers against the City of Worcester in the last ten years.

Req. 4. Any and all documents reflecting or in any way relating to lawsuits against members of the Worcester Police Department, including but not limited to Worcester police officers, detectives and civilian employees, and/or against the City of Worcester, alleging the loss, erasure or destruction of videotapes or audiotapes.

Resp. 4. Objection. Defendants object to Request 4 on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants further object to the terms "reflecting or in any way relating" as they are vague and ambiguous. Defendants also object to this request on grounds that it is overly broad in time and scope. Defendants also object to the extent Request 4 seeks information regarding lawsuits, when that information is subject to the limitation outlined in Fed. R. Civ. P. 26(b)(2)(i), and is

"obtainable from some other source [i.e., the court system] that is more convenient, less burdensome, or less expensive"

Req. 5. Any and all documents reflecting the discipline of any Worcester police officer for the use of excessive force against detainees or members of the public at any time between 1980 and the present date.

Resp. 5. Objection. Defendants object to Request 5 on the grounds that it is overly broad in both time and scope and unduly burdensome. Defendants further object to this request on the grounds that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants further object to this request on the grounds that it seeks internal affairs and/or personnel file information, in which the police officers have a privacy interest, and further object to the extent that the files, or a portion thereof, are privileged. Notwithstanding and without waiving these objections, none of the individually named defendants has ever been disciplined for excessive force or deliberate indifference to the rights of detainees.

Req. 6. Any and statements taken from or provided by Evangelista in connection with the incidents set forth in the Complaint by a police officer, detective or civilian employee following this incident or in the course of any investigation by the Worcester Police Department.

Resp. 6. Objection. Defendants object to Request 6 on grounds that Plaintiff's counsel is in possession of their own copies of the Worcester Internal Affairs Division's interviews of Plaintiff, which were conducted in the presence of Plaintiff's counsel, and, therefore, the discovery sought is subject to the limitation outlined in Fed. R. Civ. P. 26(b)(2)(i), it is "obtainable from some other source [i.e., Plaintiff's own counsel] that is more convenient, less burdensome, or less expensive" Notwithstanding and without waiving this objection, see summary of Plaintiff's interviews contained in 6/16/04 IAD Concluding Report (IAD Report), attached as Exhibit 6.

Req. 7. Any and all records of any investigation by the Worcester Police Department and/or its Internal Affairs Division into the conduct of the Worcester police officers who were involved in the booking of Evangelista at the Worcester police station on March 16, 2003.

Resp. 7. Objection. Defendants object to Request 7 on grounds that the phrase "any and all records of any investigation" is vague and ambiguous. Defendants further object to this request on the grounds that it seeks internal affairs and/or personnel file information, in which the police officers and/or witnesses have a privacy interest, and further object to the extent that the files, or a portion thereof, are privileged. Notwithstanding and without waiving these objections, see IAD Report attached as Exhibit 6 and

unredacted IDC reports of Lt. Paul Saucier, Sgt. James Johnson, Off. Daniel Fallon III, Off. Shane Marcotte, Off. Scott Calhoun, Off. Carl Supernor, Off. Jason Fanion, Off. Jonathan Cotter, provided in response to Plaintiff's 6/21/04 Public Records Request No. 5.

Req. 8. Any and all documents reflecting the result and/or conclusions reached by the Worcester Police Department as a result of any investigation into my citizen's complaint filed on or behalf of Evangelista concerning the incidents set forth in the Complaint.

Resp. 8. Objection. Defendants object to Request 8 on the grounds that it seeks internal affairs and/or personnel file information, in which the police officers and/or witnesses have a privacy interest, and further object to the extent that the files, or a portion thereof, are privileged. Notwithstanding and without waiving these objections, see IAD Report attached as Exhibit 6.

Req. 9. Any and all reports or other such documents prepared by any Worcester police officer between March 16, 2003 and the present date, in any way related to the incidents set forth in Evangelista's Complaint.

Resp. 9. Objection. Defendants object to the phrase "in any way related" on grounds that it is vague, ambiguous and overly broad. Notwithstanding and without waiving this objection, see unredacted IDC reports of Lt. Paul Saucier, Sgt. James Johnson, Off. Daniel Fallon III, Off. Shane Marcotte, Off. Scott Calhoun, Off. Carl Supernor, Off. Jason Fanion, Off. Jonathan Cotter, provided in response to Plaintiff's 6/21/04 Public Records Request No. 5.

Req. 10. Any and all reports or other such documents by any Worcester police officer and submitted to the Superintendent of the Worcester Police Department and/or Internal Affairs and/or the Bureau of Professional Standards and/or any other agency or office of the City of Worcester in any way related to the incidents set forth in the Complaint.

Resp. 10. Objection. Defendants object to Request 10 on the grounds that it seeks internal affairs and/or personnel file information, in which the police officers have a privacy interest, and further object to the extent that the files, or a portion thereof, are privileged. Notwithstanding and without waiving this objection, see Resp. 9.

Req. 11. Any and all witness statements, whether the same be signed or unsigned, written, oral or transcribed, involving the incidents set forth in Evangelista's Complaint.

Resp. 11. Objection. Defendants object to Request 11 to the extent the witnesses have a privacy interest in the requested documents. Notwithstanding and without waiving this objection, see witness statements already provided in response to Plaintiff's 4/2/03

Public Records Request, as Plaintiff indicates in items 15-21 of the Addendum to Plaintiff's 6/21/04 Public Records Request; see also witness statements provided pursuant to Plaintiff's 6/21/04 Public Records Request No. 14.

Req. 12. Any and all statements, audio recordings, or reports made by Evangelista with respect to the incidents set forth in the Complaint.

Resp. 12. Objection. Defendants object to Request 12 on grounds that Plaintiff's counsel is in possession of their own copies of the Worcester Internal Affairs Division's interviews of Plaintiff, which were conducted in the presence of Plaintiff's counsel, and, therefore, the discovery sought is subject to the limitation outlined in Fed. R. Civ. P. 26(b)(2)(i), it is "obtainable from some other source [i.e., Plaintiff's own counsel] that is more convenient, less burdensome, or less expensive . . ." Notwithstanding and without waiving this objection, see IAD Report attached as Exhibit 6.

Req. 13. Any and all documents relating to the job title, job description, job performance, qualifications, experience and/or training of each individually-named Defendant in this matter, from the time each commenced employment with the City of Worcester through the present date.

Resp. 13. Objection. Defendants object to Request 13 on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants further object to this request on the grounds that it is overly broad in both time and scope. Defendants further object to this request on the grounds that it seeks internal affairs and/or personnel file information, in which the police officers have a privacy interest, and further object to the extent that the files, or a portion thereof, are privileged. Notwithstanding and without waiving these objections, none of the individually named defendants has ever been disciplined for excessive force or deliberate indifference to the rights of detainees.

Req. 14. Any and all civil rights complaints made or filed against Worcester by members of the public or by prisoners, filed with any state or federal court between January 1, 1980 and the present date, which include allegations of excessive force and/or the failure to supervise, train, discipline and control Worcester police officers and civilian employees.

Resp. 14. Objection. Defendants object to Request 14 on the grounds that it is overly broad and unduly burdensome in both time and scope. Defendants further object to this request on the grounds that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants also object to the extent this request seeks information regarding lawsuits, when that information is subject to

the limitation outlined in Fed. R. Civ. P. 26(b)(2)(i), and is "obtainable from some other source [i.e., the court system] that is more convenient, less burdensome, or less expensive" Notwithstanding and without waiving these objections, the City is not aware of any judgments for civil rights violations by police officers against it in the last ten years.

Req. 15. Any and all judgments against any Worcester police officer, including all jury verdicts and/or jury responses to Special Questions or Interrogatories, entered in any state or federal court between 1980 and the present date wherein any Worcester police officer was found liable for civil rights violations involving the use of excessive force against detainees or members of the public.

Resp. 15. Objection. Defendants object to Request 15 on the grounds that it is overly broad in both time and scope and unduly burdensome. Defendants further object to this request on the grounds that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants also object to the extent this request seeks information regarding lawsuits and public records, when that information is subject to the limitation outlined in Fed. R. Civ. P. 26(b)(2)(i), and is "obtainable from some other source [i.e., the court system] that is more convenient, less burdensome, or less expensive" Notwithstanding and without waiving these objections, the City is not aware of any judgments for civil rights violations by police officers against it in the last ten years.

Req. 16. Any and all judgments against the City of Worcester, including all jury verdicts and/or jury responses to Special Questions or Interrogatories, entered in any state or federal court between 1980 and the present date wherein the City of Worcester was found to have acted with deliberate indifference to the rights of any plaintiff in the discipline, supervision, training and/or control of Worcester police officers.

Resp. 16. Objection. Defendants object to Request 16 on the grounds that it is overly broad in both time and scope and unduly burdensome. Defendants further object to this request on the grounds that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants also object to the extent this request seeks information regarding lawsuits and public records, when that information is subject to the limitation outlined in Fed. R. Civ. P. 26(b)(2)(i), and is "obtainable from some other source [i.e., the court system] that is more convenient, less burdensome, or less expensive" Notwithstanding and without waiving these objections, the City is not aware of any judgments for civil rights violations by police officers against it in the last ten years.

Req. 17. Any and all documents in any way related to any changes in the policies or practices of the Worcester Police Department in the

discipline, supervision, training, and/or control of Worcester police officers or civilian employees, in response to any judgment identified in response to Request Nos. 15 and 16, *supra*.

Resp. 17. Objection. Defendants object to Request 17 on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants further object to this request on the grounds that it is overly broad in both time and scope. Notwithstanding and without waiving these objections, as the City is not award of any judgments for civil rights violations by police officers against it in the last ten years, a request for policy or practice changes in response to such a judgment does not apply.

Req. 18. Any and all settlement agreements entered into between the City of Worcester and any plaintiff in any action involving claims of the use of excessive [sic] by Worcester police officers against detainees or members of the public.

Resp. 18. Objection. Defendants object to Request 18 on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants further object to this request on the grounds that it is overly broad in both time and scope.

Req. 19. Any and all documents relating to any disciplinary action taken against any of the individually-named Defendants or against any other Worcester police officer or civilian employee, as a result of the incidents set forth in the Complaint.

Resp. 19. Objection. Defendants object to Request 19 on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants further object to this request on the grounds that it seeks internal affairs and/or personnel file information, in which the police officers have a privacy interest, and further object to the extent that the files, or a portion thereof, are privileged.

Req. 20. Any and all documentary evidence which Worcester intends to offer into evidence at the trial of this action.

Resp. 20. Objection. Defendants object to Request 20 on the grounds that it seeks documents protected by the attorney work-product doctrine and/or prepared in anticipation of litigation. Defendants further object to this request as it seeks information beyond the scope discovery as allowed by Fed. R. Civ. P. 26(b)(3). Notwithstanding and without waiving these objections, no determination has yet been made as to the requested documents.

Req. 21. The entire insurance policy or policies which afford(s) Worcester or any of the individually-named Defendants coverage or

protection on the claims asserted in the Complaint, including, in particular, the coverage selection sheet for each such policy.

Resp. 21. No such documents in Defendants' possession, custody or control, as the City of Worcester is self-insured.

Req. 22. Any and all documents reflecting any reservation of rights and/or disclaimers claimed by any insurance carrier or other entity affording Worcester or any of the individually-named Defendants coverage or protection on the claims asserted in the Complaint.

Resp. 22. See Resp. 21.

Req. 23. Any and all indemnification agreements between any of the individually-named Defendants in this matter and the City of Worcester, or its insurance carries, with respect to the claims asserted by Evangelista in this lawsuit.

Resp. 23. See Resp. 21.

Req. 24. Any and all reports of experts in your possession, custody and/or control that may in any way relate to the claims asserted by Evangelista in his Complaint, either directly or indirectly.

Resp. 24. Objection. Defendants object to Request 24 to the extent that it seeks documents that are beyond the scope of discovery as allowed by Fed. R. Civ. P. 26. Notwithstanding and without waiving this objection, no such documents in the Defendants' possession, custody or control.

Req. 25. Any and all documents reflecting correspondence or communication between Worcester and the following individuals relative to the incidents set forth in Evangelista's Complaint:

- (a) Charles A. Evangelista;
- (b) each individually-named Defendant in this matter;
- (c) Daniel J. Veteramo;
- (d) Gerry Rodriguez;
- (e) Teresa Evangelista;
- (f) Nicole Evangelista; and
- (g) any individual detained at the Worcester police station on March 16, 2003 and March 17, 2003.

Resp. 25. Objection. Defendants object to the term "reflecting" as it is vague and ambiguous. Defendants further object to this

request on the grounds that it seeks information in which detainees and witnesses have a privacy interest. Notwithstanding and without waiving these objections, Defendants respond with the following:

- (a) See the IAD report, Exhibit 6.
- (b) See Resp. 9.
- (c) See the IAD report, Exhibit 6.
- (d) No such documents in Defendants' possession, custody or control.
- (e) See the IAD report, Exhibit 6.
- (f) No such documents in Defendants' possession, custody or control.
- (g) See the IAD report, Exhibit 6 and correspondence sent to detainees attached as Exhibit 25(g).

Req. 26. Any and all documents including, but not limited to, police logs, duty sheets, duty rosters or similar documents reflecting the names, addresses, badge numbers and duty assignments of all Worcester Police officers on duty during the time period Evangelista was detained and, in particular, any such documents which reflect the identity of all Worcester Police officers and/or civilian employees present at the station during the period that Evangelista was detained on March 16, 2003 and March 17, 2003.

Resp. 26. Objection. Defendants object to Request 26 on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendants further object to this request on the grounds that it is overly broad in both time and scope. Notwithstanding and without waiving these objections, see documents provided in response to Plaintiff's 6/21/04 Public Records Request No. 1.

Req. 27. Any and all incident reports, booking sheets or related documents prepared by any Worcester police officer in connection with the arrest and booking of Evangelista on March 16, 2003.

Resp. 27. Objection. Defendants object to the phrase "related documents" as it is vague and ambiguous. Notwithstanding and without waiving this objection, see booking sheet provided in response to Plaintiff's 4/2/03 Public Records Request, as Plaintiff indicates in items 3 of the Addendum to Plaintiff's 6/21/04 Public Records Request; see also the Offense/Incident report and Prisoner's Inventory sheet attached as Exhibit 27.

Req. 28. Any and all police logs, daily logs or any other such document which reflects Worcester police officers or detention attendants checking on detainees during the time that Evangelista was detained on March 16, 2003 and March 17, 2003.

Resp. 28. Objection. Defendants object to Request 28 to the extent it requests information regarding checks on detainees other than Plaintiff on grounds that the request is overly broad and seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Notwithstanding and without waiving these objections, see Cell Room Check Sheet for the male cell block attached as Exhibit 28.

Req. 29. Any and all blueprints, diagrams, schematics, or other such documents showing the location of all cameras in the Worcester police station on March 16, 2003 and March 17, 2003.

Resp. 29. Objection. Defendants object to Request 29 on grounds that it is overly broad and unduly burdensome. Notwithstanding and without waiving these objections, see Eastern Video Systems, Inc. diagram dated March 7, 2000, attached as Exhibit 29.

Req. 30. Any and all training manuals, instructions, guidelines or other such documents pertaining to the use and operation of the video monitoring system used by the Worcester Police Department on March 16, 2003 and March 17, 2003.

Resp. 30. The City is in the process of inquiring as to the existence of an owner's manual in its possession for the video monitoring system and will supplement this response if one is located; otherwise, no such documents in Defendants' possession, custody or control.

Req. 31. Any and all documents reflecting the training provided by the Worcester Police Department to all operators of the video monitoring system used by the Worcester Police Department on March 16, 2003 and March 17, 2003, and, in particular, the training provided to the Worcester police officer(s) responsible for the use of the video monitoring system during the period that Evangelista was detained.

Resp. 31. Objection. Defendants object to Request 31 on the grounds that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Notwithstanding and without waiving this objection, no such documents in Defendants' possession, custody or control.

Req. 32. Pursuant to Fed. R. Civ. P. 34(a), Evangelista requests he be permitted to inspect, test and examine the original videotape which contained his booking by the Worcester Police Department on March 16, 2003.

Resp. 32. Defendants grant this request, which must be coordinated through Defendants' counsel.

Req. 33. Pursuant to Fed. R. Civ. P. 34(a), Evangelista requests that he be permitted to inspect and examine the original "Digital T.V. Booking Log" of March 16, 2003.

Resp. 33. Defendants grant this request, which must be coordinated through Defendants' counsel.

Req. 34. Any and all mugshot photographs or profiles taken by the Worcester Police Department in connection with the arrest of Evangelista on March 16, 2003.

Resp. 34. No such documents generated in relation to this action in the Defendants' possession, custody or control.

Req. 35. Any and all photographs depicting the booking area of the Worcester police station, the hallway(s) leading from the booking area to the holding cells, and the holding cell(s) in which Evangelista was detained in March 16, 2003 and March 17, 2003.

Resp. 35. No such documents in the Defendants' possession, custody or control.

Req. 36. Pursuant to Fed. R. Civ. P. 34(a), Evangelista requests that he be permitted to make entry into the Worcester police station for the purposes of inspecting and photographing the booking area, the hallway leading from the booking area to the holding cells, the holding cells in which Evangelista was detained on March 16, 2003 and March 17, 2003.

Resp. 36. Defendants grant this request, which must be coordinated through Defendants' counsel.

Req. 37. Any and all photographs Worcester intends to introduce as evidence at the trial of this action.

Resp. 37. Objection. Defendants object to Request 37 on the grounds that it seeks materials protect by the attorney work-product doctrine and/or prepared in anticipation of litigation. Defendants further object to the extent that the request seeks information beyond the scope of discoverable information as provided by Fed. R. Civ. P. 26(b). Notwithstanding and without waiving these objections, no determination has yet been made as to the requested photographs.

Req. 38. Any and all records showing or reflecting Evangelista's use of the telephone located in the cell where he was detained on March 16, 2003 and March 17, 2003.

Resp. 38. No such documents in the Defendants' possession, custody or control.

Req. 39. Any and all Rules, Regulations, General Orders, Special Orders, or other similar documents regarding the policies, rules, regulations, practices and procedures of the City of Worcester Police Department, in effect at any time between 1995 and the present date and, in particular, those documents related to:

- (a) the reporting and investigation of incidents of misconduct against detainees or members of the public on the part of Worcester police officers;
- (b) the reporting of injuries to detainees or prisoners;
- (c) the use and operation of video recording devices at the Worcester police station;
- (d) the maintenance and storage of video cassette recordings taken at the Worcester police station.
- (e) the use of force by Worcester police officers;
- (f) the reporting of the use of force by Worcester police officers.

Resp. 39 (a-f). Objection. Defendants object to Request 39 to the extent it requests policies and procedures that were not in effect on March 16 and 17, 2003, on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Defendant further objects to this request on grounds that it is overly broad and unduly burdensome. Notwithstanding and without waiving these objections, Defendants respond as follows:

- (a) See Worcester Police Department (WPD) Rule and Regulation 1404.1, "Reporting Illegal Activities and Information Concerning Such," provided in response to Plaintiff's 6/21/04 Public Record Request No. 9.
- (b) See WPD Policy and Procedure #700, "Instructions for Handling Prisoners," which, as indicated in the response to Plaintiff's 6/21/04 Public Record Request No. 9, has already been provided to Plaintiff, and #703, "Cell Room - Handling of Prisoners - Suicide Prevention," which is attached as Exhibit 39(b).
- (c) See WPD Policy and Procedure #700, "Instructions for Handling Prisoners," which, as indicated in the response to Plaintiff's 6/21/04 Public Record Request No. 9, has already been provided to Plaintiff, and #701, "Bail Procedures/Property and Money," and #720, "Strip Search," which were both provided in response to Plaintiff's 6/21/04 Public Record Request No. 9.

- (d) No such document in Defendants' possession, custody or control.
- (e) See WPD Policy and Procedure #400, "Use of Force," provided in response to Plaintiff's 6/21/04 Public Record Request No. 9; #405, "Use of Firearms," #410, "Service Baton/Expandable Baton," and #415, "Oleoresin Capsicum ("OC") Aerosol Spray," which are attached as Exhibit 39(e).
- (f) See WPD Policy and Procedure #400, "Use of Force," provided in response to Plaintiff's 6/21/04 Public Record Request No. 9; #405, "Use of Firearms," #410, "Service Baton/Expandable Baton," and #415, "Oleoresin Capsicum ("OC") Aerosol Spray," which are attached as Exhibit 39(e).

Req. 40. Any and all documents identified by Worcester in its Answers to Plaintiff's First Set of Interrogatories in this matter.

Resp. 40. No such documents in Defendants' possession, custody or control, beyond those provided in response to the above requests.

SHANE MARCOTTE, JASON FANION,
DANIEL FALLON, III, JONATHAN COTTER,
JAMES JOHNSON, CARL SUPERNOR and the
CITY OF WORCESTER

By their attorneys,

David M. Moore
City Solicitor


Wendy L. Quinn (BBO#653954)
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

No. 05CV10311-MLW

CHARLES A. EVANGELISTA,)	
Plaintiff)	
)	
v.	)	DEFENDANT CITY OF
	)	WORCESTER'S ANSWERS TO
SHANE MARCOTTE, JASON FANION,	)	PLAINTIFF'S FIRST SET
DANIEL FALLON, III, JONATHAN	)	OF INTERROGATORIES
COTTER, JAMES JOHNSON, CARL)	
SUPERNOR and CITY OF WORCESTER,)	
Defendants)	
)	

Defendant, City of Worcester (City), hereby incorporates by reference the Protective Order, entered by the Court in this case on March 14, 2006, which is binding on the information provided herein, and answers Plaintiff Charles A. Evangelista's First Set of Interrogatories as follows:

Q1. Please state your name, age, residence, business address, occupation, the position that you hold with the Defendant, City of Worcester, and state whether the Defendant, City of Worcester, has specifically authorized you to answer these Interrogatories on its behalf.

A1. Michael V. O'Brien, legal age, City Manager, City Hall, Room 309, 455 Main Street, Worcester, MA, 01608.

Q2. Please list by name, residential address, business address, job title and assignment each and every Worcester Police officer or civilian employee present in the booking area or in the area of the detention cells on March 16, 2003 and March 17, 2003, at the Worcester police station at the time of the incidents set forth in the Plaintiff's Complaint and, in particular, identify the Officer-in-Charge of the booking area on said date.

A2. Objection. The City objects to Interrogatory 2 on grounds that the phrase "at the time of the incidents" is vague and ambiguous. Notwithstanding and without waiving this objection, I am informed, Police Officers Jason Fanion, Shane Marcotte, Daniel Fallon, III, and Jonathan Cotter, 9-11 Lincoln Square, Worcester, MA, were the officers present at the time of Plaintiff's booking. I am informed, there were no civilian employees present. I am further informed, Sergeant James Johnson was the official-in-charge of the booking area at the time of Plaintiff's booking. I am informed, see also Defendants' Response 2 to Plaintiff's First Request for Production of Documents for other

was detained. I am further informed, Officers Carl Supernor and Scott Calhoun were responsible for operating the video cameras used to tape the bookings at the time Plaintiff was detained.

(e) I am informed, Captain Reginald Needham is the custodian for the WPD of the video cassettes made during the booking of detainees.

Q10. Please identify the following:

(a) each and every Citizen's Complaint and/or Internal Affairs Complaint and/or request for investigation filed with the Worcester Police Department by any detainee or member of the public in which charges concerning the use of excessive force, assault and/or battery were filed against Worcester police officers or civilian employees of the Worcester Police Department, at any time between January 1, 1980 and the present date, regardless of whether or not the charges were substantiated;

(b) each and every judgment in any state or federal court action wherein any Worcester police officer was found liable for civil rights violations involving the use of excessive force against detainees or members of the public, at any time between January 1, 1980 and the present date;

(c) each and every judgment in any state or federal court action wherein the City of Worcester and/or the Worcester Police Department, its Chief of Police, or any supervisory personnel were found to have acted with deliberate indifference to the rights of any plaintiff in the discipline, supervision, training and/or control of Worcester police officers;

(d) with respect to any complaints or judgments identified in your answer to the preceding subsection, please identify each Worcester Police officer and/or civilian employee against whom such charges were filed, the name and address of the detainee or member of the public who filed the charges, the result of any investigation conducted by the Worcester Police Department, and, if disciplinary action was taken, please identify the nature of such action; and

(e) identify all documents in any way relating to reach such occurrence.

A10 (a-e). Objection. The City objects to Interrogatory 10 on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. The City further objects to this request on grounds that it is overly broad in both time and scope and unduly burdensome. The City further objects to this request on grounds that it seeks internal affairs and/or personnel file information, in which the police officers have a privacy interest, and further object to the extent that the files, or a portion thereof, are privileged. Notwithstanding and without waiving these objections, I am informed, the City is not aware of any judgments for civil rights violations by police officers against it in the last ten years.

Q11. Please state whether any of the individually-named Defendants in this action have ever been disciplined or reprimanded at any time since their hire by the Worcester Police Department and, if so, please identify:

- (a) the date of any disciplinary action and the nature of the same;
- (b) the reason for the disciplinary action, including the identify of all persons involved in the action giving rise to the disciplinary action;
- (c) the name and address of the person who took the disciplinary action.

A11 (a-c). Objection. The City objects to Interrogatory 11 on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. The City further objects to this request on grounds that it is overly broad in both time and scope. The City further objects to this request on grounds that it seeks internal affairs and/or personnel file information, in which the police officers have a privacy interest, and further object to the extent that the files, or a portion thereof, are privileged. Notwithstanding and without waiving these objections, I am informed, none of the individually named defendants has ever been disciplined for excessive force or deliberate indifference to the rights of detainees.

Q12. Please state fully and in detail each and every fact, and identify each and every document upon which the Defendant, City of Worcester, relies, to allege, as its Fourth Affirmative Defense, that "any force used by Defendant Marcotte was reasonable under all circumstances".

A12. Objection. The City objects to Interrogatory 12 on the grounds that it calls for a legal conclusion rather than a factual response. Notwithstanding and without waiving this objection, I am informed, any force Officer Marcotte employed was reasonable and

A20 (1-3). Objection. The City objects to Interrogatory 20 on grounds that the phrase "all policies and procedures relative to the booking of individuals" is vague and ambiguous. The City further objects to the request for information regarding "all documents related to the booking" on grounds that it is vague and ambiguous and is essentially a document request. The City further objects to Interrogatory 20 to the extent that it seeks policies and procedures that were not in effect on March 16 and 17, 2003, which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence at trial in this matter. Notwithstanding and without waiving these objections, I am informed, see WPD Policy and Procedure #700, "Instructions for Handling Prisoners;" #701, "Bail Procedures/Property & Money; and #720, "Strip Search," which all address booking and were in effect at the time of Plaintiff's booking on March 16 and 17, 2003. I am further informed, there are instances, such as here, where it is not possible to fingerprint or photograph a detainee.

Signed under the pains and penalties of perjury this ____ day of March, 2006.



Michael V. O'Brien
City Manager
City of Worcester

As to objections:

Wendy L. Quinn
Wendy L. Quinn (BBO#653954)
Assistant City Solicitor
City Hall, Room 301
455 Main Street
Worcester, MA 01608
(508) 799-1161

CERTIFICATE OF SERVICE

I, Wendy L. Quinn, hereby certify that I have served the within Defendant City of Worcester's Answers to Plaintiff's First Set of Interrogatories upon Plaintiff by mailing a copy of the same, postage prepaid, to William T. Harrington, Esquire, Glynn, Landry, Harrington & Rice, 10 Forbes Road, Braintree, MA 02184-2605 this 22nd day of March, 2006.

Wendy L. Quinn
Wendy L. Quinn
Assistant City Solicitor

GLYNN, LANDRY, HARRINGTON & RICE, LLP

ATTORNEYS AT LAW

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JOHN B. GLYNN
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May 31, 2006

BY FACSIMILE & U.S. MAIL

Wendy Quinn, Assistant City Solicitor
City of Worcester Law Department
City Hall, Room 301
455 Main Street
Worcester, MA 01608

Re: Charles A. Evangelista v. Shane Marcotte, et al
United States District Court, Civil Action No. 05-CV-10311-MLW

Dear Attorney Quinn:

I am sending this letter pursuant to Local Rule 37.1(A). It is in response to the City's Response to the Plaintiff's First Request for Documents. Pursuant to this rule, I am requesting a conference call so we can discuss the items below with an eye toward narrowing the areas of disagreement.

As you know, the plaintiff has asserted common law and federal civil rights claims against the City of Worcester and various Worcester police officers in connection with the assault made upon him on March 17, 2003. His civil rights claims are based on the following theories: excessive force; failure to intervene; failure to report, failure to supervise, and failure to discipline.

In November 2005, we requested from the City various documents concerning not only the March 17, 2003 incident and WPD's investigation thereof, but also documents respecting past complaint against the City and its police officers for excessive force and/or loss of evidence. We also sought copies of the personnel files and disciplinary history for each of the individual defendants.

The City's response was limited to production of the Internal Affairs investigation of the incident and various police policies.

With respect to the plaintiff's requests for information concerning other incidents and complaints involving police misconduct, the City objected and refused to produce any documents. The City provided a similar response with respect to the requests for the individual defendants' personnel files and disciplinary history.

Obviously, information respecting other instances of excessive force by the WPD and how the City has treated such complaints is directly relevant to the plaintiff's various civil rights claims. In an effort to reduce the City's burden, the plaintiff, as described below, is hereby modifying certain of his requests to those incidents or alleged incidents that occurred on or after January 1, 1993.

I will now address each of the requests that the plaintiff is seeking a further response to.

1. The personnel files of each of the individual defendants are directly relevant to this case and should be produced.

3. Other complaints re excessive force, etc. The plaintiff modifies this request to complaints concerning incidents occurring on or after January 1, 1993.

4. As you know, in this case, the WPD erased the tape of the incident prior to the booking of the next detainee and is apparently taking the position that this erasure was made in good faith. Therefore, other incidents where a tape was erased or destroyed in the context of a complaint against members of the WPD are probative of the claims asserted. The plaintiff modifies the request to incidents on or after January 1, 1993.

5. The way WPD and the City treats allegations of excessive force is directly relevant to the civil rights claims. The request is modified to the period set forth above.

7. Records re investigation of incident. From response, given objections, it is unclear whether all responsive documents have been produced. Please produce all responsive documents, even if such documents constitute personnel files and/or IA documents.

8. See 7.

9. See 7.

10. See 7.

13. The job duties of the officers on duty and the training of the individual defendants are directly relevant to the plaintiff's civil rights claims.

14. Again, lawsuits against member of the WPD are directly relevant to the civil rights claims. The plaintiff amends this request to cover only such lawsuits that were filed on or after January 1, 1993. Also, your initial response need only provide copies of the latest complaint and answer, all written discovery, all deposition transcripts, any settlement agreement, and judgment.

Letter to Wendy Quinn, Assistant City Solicitor

May 31, 2006

Page 3 of 3

15. Your response limits the time-period to ten years. The request is since 1980. The production of judgments against any WPD officer is not burdensome. The City should supplement its response to cover all such judgments since 1980.

16. The City's response does not address whether there have been judgments against the City, instead saying none in ten years against WPD officers. This response should be supplemented to address the request for any such judgments against the City and for the period since 1980.

17. Your response may need to be supplemented depending on how the responses to requests 15 and 16 are changed.

18. Settlement agreements by the City involving charges of excessive force. The request is obviously relevant to the claims asserted and certainly could lead to admissible evidence. The time period is added to that of since 1980.

19. Documents concerning discipline concerning this incident are highly relevant and must be produced.

In addition, should the City still maintain that responsive documents are privileged, the plaintiff requests that the City provide a privilege log, identifying each and every document withheld on the basis of privilege and the privilege(s) that apply.

Please call my partner, John Landry, or me when you have a chance to discuss. Please respond to this letter by the close of business on June 7.

Sincerely,



William T. Harrington

WTH/cao

cc: John T. Landry, III, Esq.
Charles Evangelista

TRANSMISSION VERIFICATION REPORT

TIME : 05/31/2006 13:50
NAME : GLHR, LLP
FAX : 7813563393
TEL :
SER. #: BROM5J408702

DATE, TIME	05/31 13:49
FAX NO./NAME	15087991163
DURATION	00: 01:36
PAGE(S)	04
RESULT	OK
MODE	STANDARD ECM

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FAX COVER SHEET

TO: Wendy Quinn, Esq.
Law Department – City of Worcester

TELECOPY NO: (508) 799-1163

FROM: William T. Harrington

DATE: May 31, 2006

NUMBER OF PAGES (including cover sheet): 4

**IF YOU HAVE ANY PROBLEMS RECEIVING
THIS TELECOPY, PLEASE CALL (781) 356-1749**

COMMENTS:

Re: Evangelista v. Marcotte, et al.

Q12. Within the ten (10) years prior to January 8, 1999, through and including the date of your answer hereto, has the City, the Department received any citizen complaints against an officer of the Department alleging excessive force in the making of an arrest, and/or malicious or unlawful prosecution? If so, please identify and describe:

- a. The nature, substance, and description of each complaint
- b. The name, address, and telephone number of each complainant
- c. The disposition of each complaint.

A12(a-c). Objection. Interrogatory 11 is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Moreover, Interrogatory 11 is overly burdensome. Lastly, the information sought in Interrogatory 11 would infringe on the privacy interests of any complainants.

Supplemental A12. Same objections as in A12. Notwithstanding and without waiving these objections and pursuant to the Court's Order in this lawsuit, I am informed that the following is a list of citizen complaints, made against an officer(s) of the Worcester Police Department, alleging excessive force for the period from 1989 through January 11, 1999:

Complainant Name & Address	Description of Allegation	Result
William Vickers 10 Benefit Terr Worc 753-6020	punched in nose	Unfounded
Eric Nye 66E Main St Princeton, MA (508) 464-5614	punched & kicked	Unsubstantiated
David Grajales 67 Oread St. Worc 791-1145	Hit in mouth	Not Substantiated
Melvin Lackey 329 Cambridge St Worc 754-9197	Pushed down stairs	Unsustained
Kenneth Padgett Jr 165 1/2 Madison St Worcester 799-0995	Grabbed by throat	Unsustained
Robert Smith 39 Maywood St. Worc 754-1607	Hit with flashlight & Dragged	Compliance with rule
Brian Abernathy 196 Crossfield Rd. Franklin, MA 528-7074	Grabbed by throat	Cmplt. withdrawn
Stephen J. Stuczynski 4 Crescent St. Grafton, MA 839-9648	pushed	Not Substantiated
Allen Jenkins 54 High Ridge Rd. Worc 755-2787	Slapped	Can not be substantiated
James Nicholson 12 Branch St.	Punched, kneed, hit with flashlight	Unsustained

Complainant Name & Address	Description of Allegation	Result
Worc 752-5097		inadequate
Gary Howe 16 Thenius St. Worc. 795-7983	Knee used to hold down subject	in compliance with law
Elis Medina 91 Murray Ave. #42 Worc 756-7356	choked and thrown against cruiser	Unsustained
Robert Agbay 29 Euclid Ave. Worc 754-7462	Picked up by handcuffs	Unfounded
Randy Thomas 34 Richards St Worc 757-8805	Picked up hand cuffs, grabbed in groin area	Unsubstantiated
William Belcher 98 Eastern Ave Worc 756-5616	Dragged from vehicle, beaten	Unsubstantiated
James Carrier 20 Mann St 757-4898	pushed	Unfounded
Dominic Pizzotti 22 Ludlow St Worc 756-1908	grabbed by throat, punched	Unfounded
Glenn Rocco 41 Creeper Hill Rd Grafton 839-6504	Kicked	Unsustained
Robert Jackson 881 Main St no phone	grabbed by throat	Unfounded
Dennis Marment 76 1/2 Providence St Worc 757-3397	Pushed	In compliance with rules & regs.
Paul Kelly 50 Dorchester St 757-3045	Grabbed & thrown down to floor	Unfounded
Daniel Hovagimian 498 Mill St 754-1869	Grabbed by throat	Unsustained
William Sims 17 King St 756-3674	Punched in head	Unsustained
Raymond Zayes 50 Franklin St no phone	handcuffed, thrown to ground, pushed into wall	Unsustained
Dan McDaniel 8 Townsend St 757-3364	dragged from vehicle	In compliance w/ policy/procedures
James Notice 16 Hollywood St No phone	Grabbed & hit with night stick	Unsustained
James Smith 32 Irving St Worc 756-0983	Grabbed & punched	Insufficient evidence
Vincent Roy 12 Stoneland Rd no phone	hit with service baton	In compliance w/ policy/procedures
John Scobie 143 Cambridge St. Worc 757-8075	Hit in face with night stick, kicked in chest	Unsustained
Joseph Consolo No address listed	kicked	Insufficient proof
John Tashjian 26 Bailey St. Worc 754-8175	Thrown into police car, dragged and thrown into wag	Unsustained
Richard Cummings Sr 115 1/2 Eastern Ave Worc 852-5900	Hit on head and face with flashlight	Unfounded
Tina Louise Pescheta 58 Main St. Millbury no phone	unnecessary force	Not Sustained
Michael Daher 34 Venus Dr.	Thrown against car three times	Unsustained

Complainant Name & Address	Description of Allegation	Result
Worc 852-8945		
Juan Mora 40A Aetna St Worc 792-0081	Struck in head 5-6 times with police radio	Unsustained
Kristen Dudley 727 Hartford Tpk Shrewsbury 842-2330	Pushed against car	Not substantiated
Shelleigh Wilcox 80 Brigham Hill Road Grafton 753-5034	manhandled when put in cruiser	Unfounded
Ken E. Freeman 530 N. Falmouth Hwy N. Falmouth 563-9031	Head banged against cruiser	Unfounded
Dominic Pizzotti 22 Ludlow St. Worc 756-1908	Dragged along sidewalk	Unsubstantiated
Alfred Berry Sr&Jr 20 Hermitage Ln Worc 756-2455	pushed & punched	Unsustained
Carmen Chico 22 Tacoma St Worc 853-5456	pushed against police vehicle	Cmplt. unjustified
Thomas Baillargeon 17 Freeland St. Worc no phone	hit in face with flashlight, choked	Unsustained
Walter W. Claire 48 Main St. Southboro 872-0744	pushed head into cruiser	not Sustained
Antonio Venincasa 115 Sterling St (508)755-9677	dragged down stairs	not in violation of law
Marjorie Rainwater obo James 11 King St Worc no phone	pushed against cruiser & choked	Unfounded
Louis Hanley 21 Barclay St Worc 755-5828	hit on head with night stick	Cmplt. unjustified
Tower G. Benson 24 Somerville Rd Worc 01604 757-2658	Threw over car, punched in neck	Unsustained
Carmen Gonzalez obo Israel 25 Hooper St Worc 798-4095	Grabbed by throat, thrown to ground	Cmplt. unjustified
Frances Simpson 122 Southgate St 792-4770	pushed to ground	Not Sustained
William Belcher 98 Eastern Ave No phone	punched or kicked	Not Sustained
George Griffin 20 Franklin St no phone	pushed	no violation
Warren Ovitt 11 1/2 Hammond Street 798-8317	dragged down stairs, pushed against wall hit in head	Not Sustained
Anthony Barca 32 Cutler St 757-0490	jumped and beaten	Not Sustained
Geza Marton Jr. 15 1/2 Kingsbury St 791-0998	forced to ground	not Sustained
Scott Domenech 149 Austin St Worc 792-9214	pushed, punched, thrown to ground	Unsubstantiated
Germiah Ramos 531 Main St Worc no phone	punched in eye	Unsustained
Brian P Donahue 48 Beaver St. Worc 756-2643	punched	Not Sustained

Complainant Name & Address	Description of Allegation	Result
Jennifer Geltman 19 Hillside Dr. Wayland Ma (508) 358-5683	pushed	Not Sustained
Troy Johnson 162 Beacon St Worc no phone	struck in leg with night stick	Not Sustained
Joyce Bindman 68 Outlook Dr Worc 756-1056	hair pulled, thrown to ground	Unfounded
Stephen Safo-Sampah 59 Outlook Dr Apt 31753-6789	Kicked	Unfounded
Libertario Garay 50 Murray Ave 799-9058	hit with night stick	Unfounded
Stanton Holley 39 Dale St 755-7017	pushed	Not Sustained
Nelson Lopez 1 Vernon Terr Worc 754-7214	hit with night stick	Unfounded
Leo Beatty 128 Fairmount St Fitchburg 345-3872	cuffs too tight	Not Sustained
Ruben Gonzalez 59 GBV Worc 852-6979	punched & Slapped	Not Sustained
Robert Moquin 13 Fifth Ave 791-3904	cuffs too tight	No Violation
Roberto Rivera 46 Tilley Ave Southbridge MA 764-4215	slapped, punched, kicked	Not Sustained
Daniel Lapense 3 Esther St 753-5763	pushed against wall	Not Sustained
Vincent Fricker 136 Eastern Ave Worc 756-0218	cuffs too tight	Not Sustained
Nathan Soucy 89 Greenhill Parkway Worc 797-3390	punched	Not Sustained
Beverly Shays 92 Houghton St Worc 757-6035	pushed, grabbed by hair	Not Sustained
Joseph Consolo 5 Polono Rd Worc unknown phone	kicked	Insufficient proof
Denise O'Brien 10 Governors Dr Reading MA 617-944-1166	pushed, cuffs too tight	no violation
Peter Simpson 15 Stanton St Worc 757-8154	grabbed by neck, pushed	Not Sustained
Raymond Perrone 21 Grove Ridge Path Shrewsbury Ma 01545 798-3911	pushed	Insufficient evidence
David Roberson 74 Outlook Dr. Apt 33 Worc 755-8349	slammed against cruiser	Not Sustained
Angelo D'eangelis 1187 Millbury St Worc 01604 755-6020	hit in chest	Exonerated
Anthony Gagliastre 10 oliver St 01610 508-752-6699	slammed face into door	Not Sustained
William McKeever 23 Wyman St. Worc 01610	grabbed by collar	Not Sustained
Jerry Jenkins 5 Forestdale Rd	Cuffs too tight	Exonerated

Complainant Name & Address	Description of Allegation	Result
Worc 795-0441		
Travis Moore 50 Franklin St 798-7075	pushed against car, punched in eye	Not Sustained
Ivette Burgos 15 LaGrange St 757-8650	kicked in chest	Unfounded
Jerry Jenkins 5 Forestdale Dr 795-0445	hit on shoulder	Unfounded
Scott Chase 165 Sutton Ave apt 114 Oxford, MA 987-3016	punched in head	Sustained
Sandra Bishop 214 Austin St 797-6010	grabbed by throat	Insufficient evidence
Anthony Wheeler 52 Bowdoin St Worcester 753-3863	hit in face and kicked	Unfounded
Michael Olang 574 Chandler St Worcester 10602 752-4477	pushed	Exonerated
Robert Cruz 10 Newbury St Worcester 792-9214	hit with night stick, cuffs too tight	Exonerated
Antonio Mendez P.O. Box 466 Gardner MA no phone listed	pushed into wall	Not Sustained
John Monsam 103 Lincoln Rd Sutton, MA 865-5620	hit in head with flashlight, choked	Unfounded
Christopher Eck 125 Chester St Worcester 853-3411	punched in mouth, threw to ground	Not Sustained
Thomas Manser 29 White Ave Worcester 01605 853-5621	roughed up	Unfounded
Robin Berry 4 Orne St Worcester 757-4401	grabbed by arm	Exonerated
Jason Hall 43 Park St Clinton 368-1668	grabbed by coat	Not Sustained
Richard Mills 21 Washburn St Worcester 791-2776	hit while in back of wagon	Exonerated
Raymond Frazier 90 Granite Street Apt. 2 Worcester, Ma	pushed, denying entrance to authorized area of p.d.	Exonerated
Thomas Gillis 129 West Street Worcester, Ma	Struck in leg with baton	Unfounded
John Coderre 1800 Douglas Avenue Apt 328 N.Providence, RI	Handcuffed too tightly, thrown to ground.	Not Sustained
Cristino Hernandez	Physical restraint while handcuffed	Exonerated
Michael Boykin 98 Winfield Street Worcester, Ma	Handcuffs applied too tightly, face pushed into roof of police cruiser and assaulted there.	Exonerated
Paschal Pavini 76 Sears Island Drive Worcester, Ma	Handcuffs applied too tightly, fractured wrist.	Exonerated
Ann Forget 4 Hacker Street Worcester, Ma	Restraint by knee and handcuffs, punch, pepper spray, kicked	Not Sustained
Jesus Addarich 7 GBV Avenue Worcester, Ma	Thrown against car, arms twisted	Exonerated
Nathan Rondeau 23 GBV	Pushed against fence, struck with forearm	Exonerated

Complainant Name & Address	Description of Allegation	Result
Avenue Worcester, Ma	to face,thrown to ground.	
Shawn Keenan	Punched twice to facial area and thrown to ground. Struck head on kitchen table.	Unfounded
Alfred Snead 165 Highland Street Worcester, Ma	Assault, held forcefully during handcuffing.	Not Sustained
Pedro Morales 60 Humes Avenue Worcester, Ma	Slammed against bureau and wall	Not Sustained
Pedro Morales 60 Humes Avenue Worcester, Ma	Slammed against wall,thrown to ground, kicked in facial area.,	Not Sustained
Juan Antonio Morillo 206 Bushick Avenue Brooklyn, Ny	Stuck with flashlight, punched, and kicked.	Unfounded
James Peck 8 Town Farm Rd N.Brookfield Ma	Thrown to ground and kicked.	Exonerated
Juan Rosales 67 Piedmont Street Worcester, Ma	Pushed against wall	Not Sustained
Andrea Arduini 37 Brantwood Street Worcester, Ma	Pushed, struck with door and handcuffs,maced,tightly handcuffed	Not Sustained
Lonnie Miller 30 Ball Street Worcester, Ma 01603	Pushed against car repeatedly,had recent injury which was exploited, choked,thrown into patrolwagon	Exonerated
Jay Rosenfield 18 Brookside Avenue Worcester, Ma	Struck in face with radio,had firearm pointed at him	Exonerated
Chino Julio Torres 3a Clement Street Worcester, Ma 01610	Struck by police officer	Open file
Carol Williams 211 Dewey Street Worcester, Ma 01609	Recent injury was exacerbated by pressure used to effect arrest	Exonerated
Irvin McIver 1500 Worcester Rd. Framingham, Ma 01701	Broken Wrist during handcuffing	Unfounded
Elizabeth Vaisey 2 Kimball Street Worcester, Ma 01605	Pushed into cell,handcuffs too tight,treated'cruely'.	Exonerated
George Kelly 38 Catherine Street Worcester, Ma	Pushed into cell wall.	Sustained
Arnaldo Rodriguez 6 Beacon Street Boston, Ma 02108	Kicked, assaulted	Exonerated
Oscar Suarez 60 Arthur Street Worcester, Ma 01604	Struck in chest with flashlight twice	Not Sustained
William Olivero 25 Ethan Allen Street Worcester, Ma 01610	Grabbed neck, pushed against wooden bench	Sustained
Kelly O'Neil P.O. Box 70112 Worcester, Ma	Grabbed by hair, kicked to ground, smashed face into ground	Open file
Robert Morrisette 284 Church Avenue Northbridge, Ma 01534	Slammed against car, choked	Exonerated
Mark Stevens 950 Main Street Worcester, Ma 01610	Pushed against cruiser,slammed face against car, pushed to ground.	Exonerated
Ralph Altif 3 McGill Street Worcester, Ma	Charged at me, grabbed me and arrested me	Other

Complainant Name & Address	Description of Allegation	Result
Michael Larson 27 B Marjorie Street Worcester, Ma 01604	Kicked in stomach	Unfounded
Carol Lambert 41 Barclay Street Worcester, Ma 01604	Thrown against cruiser, stuck in head.	Unfounded
Roy Roach 145 Eastern Avenue Worcester, Ma 01605	Kicked repeatedly,	Not Sustained
Richard Pinto	Repeatedly punched in the face, and solar-plexus. Handcuffs applied to tightly.	Exonerated
Cleveland Davis	Forearm strike to throat, kneed, kicked while subdued	Exonerated
Daniel Maldonado 55 Highland Street Worcester, Ma 01608	Slammed against metal door and struck repeatedly	Exonerated
George LegereDerrick Kiefer 11 Woodland St. Worcester, Ma	Slapped in face	Sustained
Armand Houle 5 Lowell Street Worcester, Ma 01603	Knocked out and pepper sprayed	Not Sustained
Darlene Saucier 42 Elbridge Rd. Auburn Ma 01501	Grabbed by neck	Unfounded
Zachary Jordan	Placed barrel of firearm against head	Not Sustained
Gail Burroughs 26 Ames St Worcester Ma 01610	Slammed onto car, twisted arm,	Unfounded
Marzella Scott 120 Chino Avenue Worcester, Ma 01605	Twisted arm	Exonerated
Henry Prince 13 Jaques Ave Worcester, Ma	Body slammed to cement	Unfounded
Henry Prince 13 Jaques Avenue Worcester, Ma	Thrown to cement	Exonerated
Gabrielle Saez 24 Illinois Street Worcester, Ma	Struck her, injured her arm, and grabbed hair	Other
Joseph Ruggieri 73 Farrar Avenue Worcester, Ma 01604	Pushed down hill, pulled hair, squeezed neck.	Unfounded
Micah Yanis 64 Humes Avenue Worcester, Ma 01605	Slammed against wall, slammed head, dislocated thumb	Not Sustained
Jose Sanchez 88 Canterbury Street Worcester, Ma 01610	Choked, struck in groin, slammed against wall	Exonerated
Lameron Bishop&Beth Pierpont Worcester State Hospital, Worcester, Ma	Struck in eye with flashlight	Exonerated
Judith Dejong 38 Orne Street Worcester, Ma 01605	Grabbed arms, tightly applied handcuffs.	Exonerated
Jay Rosenfield 55 Southwest Cutoff Northboro, Ma 01532	Choked to prevent allegedly swallow drugs	Unfounded
Chief Gardella	Punch, kick, pepper spray	Exonerated
Nicholas Mastromateo 6 Dawson Rd. Worcester, Ma 01602	"Excessive Force"	Unfounded
April Rollins 17 Stoneland Rd. Worcester, Ma 01603	Pulled out of car, kicked, punched, and beat	Unfounded
Sindy Francis 20 Wall Street	Pulled hair and grabbed arm	Unfounded

Complainant Name & Address	Description of Allegation	Result
Worcester, Ma 01604		
Lawrence Frisoli 801 Cambridge Street, Cambridge, Ma 02141	Struck person and threatened with service weapon	withdrawn
Derrick Mensah 27 Dawson Rd Worcester Ma 01602	Struck with elbow, pushed into fence, struck in head, threatened with K9	Not Sustained
Jane Miglionico 4 Waban Ave Worcester, Ma 01604	Punched in face,Maced,thrown into patrol wagon.	Not Sustained
Marisela Rubet 49 Austin Street Worcester, Ma 01609	Grabbed throat, thrown against car	Unfounded
Kornachie Smith 185 Eastern Avenue Worcester, Ma 01608	Attacked, thrown to ground,slammed face onto car,knelt on face	Not Sustained
Alexander Bernal 58 Vernon Street Worcester, Ma 01608	Broke nose, thrown to ground,Maced, repeated striking	Exonerated
Tammy O'Connell 12 Delaware Street Worcester, Ma 01603	Struck with flashlight, thrown to the ground, pressure point to temple area	Exonerated
Juan Portalatin 31 Queen Street Worcester, Ma	Headbutt, roughly searched	Exonerated
Antoinette Penn 37 Bellevue Street Worcester, Ma 01609	"Beaten"	Withdrawn
Richard Bohigian 48 Wachusett Street Worcester, Ma 01609	Slammed head into car,	Not Sustained
Frank Perez 60 Boylston Street Worcester, Ma 01605	Thrown over couch, punched, kicked, elbowed, and struck w/ flashlight.	Unfounded
Brian Davis 69 Grove Street Worcester, Ma 01606	Hurt during transport vehicle operation	Unfounded
Santa Maria Cabrera 31 Gates Street Worcester, Ma 01610	Grabbed throat, slammed onto car	Unfounded
Pamela Bombard 8 Sturgis Street Worcester, Ma 01605	Grabbed arm, pushed.	Unfounded
Francis Kearney 86 Poor Street Andover, Ma 01810	Maced	Unfounded
Robert Berman 2 Ralston Road Weymouth Ma 02190	Pushed against steel railing, thrown to the ground	Withdrawn
Dorothy Clark 2 Oread Street Worcester, Ma 01608	Handcuffed too tightly	Unfounded
Ann Forget obo Lawrence Forget 77 Perry Ave Worcester, Ma 01610	Banged head on car, slapped, knocked to ground and kicked	Exonerated
Ann Alcantra 153 Leighton Street Fitchburg, Ma 01420	Punched	Unfounded
Raoul Malta 40 Catherine Street Worcester, Ma 01605	Shoved in the chest and hit in the face	Unknown
DSS obo Arnaldo Lebron	Grabbed on neck, smacked in the face and then brutally thrown against wall. Punched in face kicked	Exonerated
Matthew Leroux 73 Richmond Avenue Worcester, Ma 01602	Grabbed on neck and pushed against a van	Not Sustained
Fric Asante aka George	Pushed and punched in the face	Not Sustained

Complainant Name & Address	Description of Allegation	Result
Mensah 146 Chandler Street 12 Worcester, Ma 01601		
Willie Negron, Linda Alago, Susan Ojeda 46 Elm Street Worcester, Ma	Thrown against a car	Exonerated
Irving Corey 44 Byron Street Worcester, Ma 01606	Punched in stomach and mouth	Unfounded
Aaron Derr 30 Belvista Road Worcester, Ma 01602	Thrown to the ground, stepped on	Not Sustained
Jason Tomkiewicz 3 Paxton Road Leicester, Ma	Strangled	Not Sustained
Michelle Waitkus 19 Canton Street Worcester, Ma 01610	Pushed to ground	Unfounded
Arvelo Celestino aka Jamie Gonzales 17 Federal St. Worcester, Ma 01608	Struck with stick, stepped on,	Exonerated
Juan Portalatin 7 Dewey Street Worcester, Ma 01609	Struck with club, knocked to ground, kicked punched, and hit.	Exonerated
Lucinda Ramenda 752 Pleasant Street Worcester, Ma 01602	Struck with baton, thrown to the ground	withdrawn
Shawn Wilder 15 Irving Street Worcester, Ma 01609	Stepped on neck	Exonerated
Jose Rivera 27 Green Hill Towers Worcester, Ma 01608	Slammed head against car and broke my eyebrow (sic)	Unfounded
Nicole Shippee 139 Austin Street Worcester, Ma 01609	Thrown against car	Not Sustained
Tina Figueroa 200 Vernon Street Worcester, Ma 01604	Slammed against wall	Unfounded
Kenneth Monero 25 Hooper Street Worcester, Ma 01608	Slammed to floor, Knee to back	Not Sustained
Kevin Ksen 5 Shawmut Street Worcester, Ma 01609	Choked, banged head against car	Exonerated
Evelyn Santana ACLU	Pushed to sit down, slammed to ground	Exonerated
Robert Jackson 50 Freeland Street Worcester, Ma 01610	Put hands on neck	Exonerated
Maria Cintron obo Jason Ramos 3 GBV Ave Worcester, Ma 01605	Knee to face, beat up	Exonerated
Stephen White 94 Aphorp Street Worcester, Ma 01606	Grabbed from behind in a 'neck lock'	Not Sustained
Robert Alston 17 Preston Street Worcester, Ma 01610	Pushed against wall, elbow in chin	Not Sustained
Tammie Davio 11 Gibbs Street Worcester, Ma 01607	Pushed down	Unfounded
Michael DeMalia 64 Harold Street Worcester, Ma 01604	Pushed, knee to ribs, choked, struck with nightstick, thrown into patrol wagon	Exonerated
Russell Swallow obo Randall Swallow	Brutally beaten	Withdrawn
Joshua Carricchio 10 Cheever	Grabbed arm and tore sleeve to jacket	Not Sustained

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CHARLES A. EVANGELISTA ,)
Plaintiff)
)
v.) CIVIL ACTION
) NO. 05-CV-10311-MLW
SHANE MARCOTTE, JASON FANION,)
DANIEL FALLON, III, JONATHAN COTTER,)
JAMES JOHNSON, CARL SUPERNOR, and)
THE CITY OF WORCESTER,)
Defendants)
)

ORDER

Upon written Motion of the Plaintiff and after a hearing, it is ORDERED and
ADJUDGED

1. That, within ten (10) days of this Order, the Defendant City of Worcester ("City") must produce the following documents to counsel for the plaintiff:

a. A complete copy of the personnel files of each of the individual defendants, including all records of all disciplinary actions taken against any of the individual defendants and all records concerning all complaints/investigations, including Internal Affairs Investigations/Complaints with respect to which any of the individual defendants was alleged to have engaged in misconduct.

b. With respect to each and every lawsuit filed against any of the individual defendants alleging the use of excessive force and/or mistreatment of an arrestee/detainee, a copy of the most recently filed complaint/amended complaint, all answers to the complaint by the City and any Worcester Police Department ("WPD") officers, all answers to interrogatories and written response to documents requests by the City and any individual WPD officers, any court order(s) dismissing the complaint and/or granting judgment; any settlement agreement and release, and any judgment. The production of any settlement agreement, release, and discovery response shall be subject to the Protective Order, dated March 14, 2005.

c. With respect to each and every lawsuit filed against the City and/or any of the individual defendants since January 1, 1993 involving the loss,

erasure or destruction of a videotape or audiotape at any time since January 1, 1993, a copy of the most recently filed complaint/amended complaint, all answers to the complaint by the City and any WPD officers, all answers to interrogatories and written response to documents requests by the City and any individual WPD officers, any court order(s) dismissing the complaint and/or granting judgment; any settlement agreement and release, and any judgment. The production of any settlement agreement, release and discovery response shall be subject to the Protective Order, dated March 14, 2005.

2. That, within ten (10) days of this Order, the Defendant City of Worcester ("City") must provide plaintiff counsel with a supplemental answer to Interrogatory No. 10(a) so as to provide a list, in chronological order from the date of complaint, each and every Internal Affairs complaint/investigation involving an allegation against the WPD or any officer thereof concerning the use or alleged use of excessive force and/or the mistreatment of an arrestee/detainee at any time since January 1, 1993. Such answer shall provide the full name, and last known address of the complainant (and alleged victim if different), the date of the alleged incident, the date of the complaint, a general description of the nature of the allegation, the result of the Internal Affairs investigation (sustained, not sustained, etc.), the date the Internal Affairs investigation was complete, the WPD officer(s) who drafted the Internal Affairs investigation report, and, to the extent any of the individual defendants were alleged to have committed any wrongdoing and/or were asked to submit a written report on the incident in question, the name of each and every such individual defendant.

3. Upon production of such document, plaintiff Evangelista will have fourteen days (14) to provide a list of those disclosed Internal Affairs complaints/investigations with respect to which he wishes to have a copy of the complete file. If Evangelista believes the City's listing document does not comply with this Order, he can request a corrected document within fourteen days and, during the time for such request and the City's written response and the pendency of any Motion to Compel, the fourteen day period for Evangelista to make his request for files is stayed. With respect to any requested Internal Affairs complaint/investigations information that the City believes should not be produced, the City shall file for a Protective Order within fourteen days of receipt of such request. The complete file of each Internal Affairs complaint/investigation not objected to by the City by way of a Motion for a Protective Order must be produced to Evangelista within fourteen days of such request. All documents produced are subject to the Protective Order, dated March 14, 2005.

So ordered.

District Judge

Dated: